



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R05-OAR-2019-0518; FRL-10004-91-Region 5]**

**2008 Ozone National Ambient Air Quality Standards; Wisconsin;  
Determination of Attainment by the Attainment Date for Inland  
Sheboygan; Reclassification of Shoreline Sheboygan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing two actions related to the attainment date for two areas classified as "Moderate" for the 2008 ozone National Ambient Air Quality Standards (NAAQS). First, EPA is proposing to determine that the Inland Sheboygan, Wisconsin (WI) nonattainment area attained the standard by the July 20, 2019, extended attainment date. Second, EPA is proposing to determine that the Shoreline Sheboygan, WI nonattainment area failed to attain the standard by the extended attainment date. The effect of failing to attain by the attainment date is that the area will be reclassified by operation of law to "Serious" upon the effective date of the final reclassification action. Consequently, the Wisconsin Department of Natural Resources (WDNR) must submit State Implementation Plan (SIP) revisions required to satisfy

the statutory and regulatory requirements for Serious areas for the 2008 ozone NAAQS. EPA is proposing deadlines for submittal of those SIP revisions and implementation of the related control requirements.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2019-0518 at <http://www.regulations.gov>, or via email to [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the

"For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR--18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353--4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. Determination of Attainment by the Attainment Date for the Inland Sheboygan area
- III. Reclassification of the Shoreline Sheboygan area
- IV. Summary of Proposed Actions
- V. Statutory and Executive Order Reviews

## **I. Background**

Under section 181(b)(2) of the Clean Air Act (CAA), EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable

attainment date, and to take certain steps for areas that failed to attain.

On May 21, 2012, EPA designated the entirety of Sheboygan County in Wisconsin as nonattainment for the 2008 ozone NAAQS (77 FR 30088). At the time of its designation, the Sheboygan County, WI nonattainment area for the 2008 ozone NAAQS was classified as Marginal with an attainment date of July 20, 2015. On May 4, 2016, EPA determined that the Sheboygan nonattainment area qualified for a one-year attainment date extension to July 20, 2016 (81 FR 26697). On December 19, 2016, EPA determined that the area had failed to attain the standard by its extended attainment date, and EPA reclassified the Sheboygan nonattainment area as Moderate with an attainment date of July 20, 2018 (81 FR 91841).

On July 15, 2019, EPA revised the designation for the Sheboygan nonattainment area for the 2008 ozone NAAQS, by splitting the original area into two distinct nonattainment areas that together cover the identical geographic area of the original nonattainment area (84 FR 33699). One of the separate areas, called the Shoreline Sheboygan County, WI nonattainment area, consists of the eastern portion of the original area, including the Sheboygan Kohler Andrae monitor. The other separate area, called the Inland Sheboygan County, WI

nonattainment area, consists of the western portion of the original area, including the Sheboygan Haven monitor. On August 23, 2019, EPA determined that the Inland Sheboygan area and Shoreline Sheboygan area qualified for one-year attainment date extensions to July 20, 2019 (84 FR 44238).

For a concentration-based standard, such as the 2008 ozone NAAQS, a determination of attainment<sup>1</sup> is based on a nonattainment area's design value. The design value for the 2008 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The 2008 ozone NAAQS is met at an ambient monitoring site when the design value does not exceed 0.075 parts per million (ppm). The attainment date design value is based on the three most recent, complete calendar years of data preceding the attainment date. In this case, EPA's proposed determinations for each area are based on the complete, quality-assured and certified ozone monitoring data from calendar years 2016, 2017, and 2018. As such, EPA's proposed determinations for each Sheboygan area are based upon the complete, quality-assured and certified ozone monitoring data from calendar years 2016, 2017, and 2018.

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<sup>1</sup> The criteria for determining if an area is attaining the 2008 ozone NAAQS are set out in 40 CFR 50.15 and 40 CFR part 50, appendix P.

All monitors in an area must be considered when determining if the area attains the NAAQS. To make the determination that an area attains the NAAQS, each monitor must have a valid<sup>2</sup> design value meeting the standard. If one or more monitors in an area have a design value that exceeds the standard, the area does not attain the NAAQS. For the Inland Sheboygan area, EPA must consider the design value from the Sheboygan Haven monitor with site ID 55-117-0009, and for the Shoreline Sheboygan area, EPA must consider the design value from the Sheboygan Kohler Andrae monitor with site ID 55-117-0006. Data from these monitors are presented in Table 1.

Table 1. Annual and three-year average of the 4<sup>th</sup> high daily maximum 8-hour ozone concentrations for the Inland Sheboygan area and Shoreline Sheboygan area.

Area	Monitor	2016 4 <sup>th</sup> high (ppm)	2017 4 <sup>th</sup> high (ppm)	2018 4 <sup>th</sup> high (ppm)	2016-2018 average (ppm)
Inland Sheboygan County, WI	Sheboygan Haven (55-117-0009)	0.074	0.070	0.070	0.071
Shoreline Sheboygan County, WI	Sheboygan Kohler Andrae (55-117-0006)	0.085	0.075	0.083	0.081

Additional background and rationale for EPA's actions making determinations of attainment, reclassifications, and establishing SIP submission and implementation deadlines for

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<sup>2</sup> Design values attaining the 2008 ozone NAAQS must also meet minimum data completeness requirements specified in 40 CFR part 50, appendix P to be considered valid.

reclassified areas for many of the other 2008 Moderate ozone nonattainment areas is provided in our August 23, 2019 final rulemaking (84 FR 44238), as well as in our November 14, 2018 proposal of that rulemaking (83 FR 56781).

## **II. Determination of Attainment by the Attainment Date for the Inland Sheboygan area**

The Inland Sheboygan area had a design value that did not exceed 0.075 ppm based on the 2016-2018 data. Thus, EPA proposes to determine, in accordance with CAA section 181(b)(2)(A), that the area attained the standard by the applicable attainment date of July 20, 2019.<sup>3</sup>

This proposed determination of attainment by the attainment date does not constitute a formal redesignation to attainment as provided for under CAA section 107(d)(3). Redesignations to attainment require states to meet the statutory criteria set out at CAA section 107(d)(3)(E), which include requirements that the state has met the applicable requirements under CAA section 110 and part D, and EPA has approved a maintenance plan to ensure

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<sup>3</sup> On July 15, 2019, EPA made a Clean Data Determination for the Inland Sheboygan area and, in accordance with 40 CFR 51.1118, suspended the requirements for the state to submit an attainment demonstration and associated RACM, RFP plans, contingency measures, and other planning elements related to attainment of the 2008 ozone NAAQS (84 FR 33699). Today's proposed action does not alter the status of the final Clean Data Determination for the Inland Sheboygan area.

continued attainment of the standard for 10 years following redesignation, as provided under CAA section 175A.

### **III. Reclassification of the Shoreline Sheboygan area**

EPA is proposing to determine that the Shoreline Sheboygan area failed to attain the 2008 ozone NAAQS by the extended attainment date of July 20, 2019. This area is not eligible for a second 1-year attainment date extension because the area does not meet the extension criteria under CAA section 181(a)(5) as interpreted by EPA in 40 CFR 51.1107. Under these criteria, for an area to qualify for a second 1-year extension, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year must be 0.075 ppm or less.

Section 181(b)(2)(B) of the CAA requires EPA to publish a determination of failure to attain and accompanying reclassification in the Federal Register no later than 6 months after the attainment date, which in the case of the Shoreline Sheboygan area would be no later than January 20, 2020.

As required under CAA section 181(b)(2)(A), if EPA finalizes the determination that the area failed to attain by the attainment date, it will be reclassified to Serious by operation of law. The reclassified area will then be subject to



the Serious area requirement to attain the 2008 ozone NAAQS as expeditiously as practicable, but not later than July 20, 2021.

Once reclassified as Serious, the state must submit to EPA the SIP revisions for the area that satisfy the statutory and regulatory requirements applicable to Serious areas established in CAA section 182(c) and in the SIP Requirements Rule.

However, the statutory timeframes for SIP submissions applicable to areas originally classified as Serious have passed. For instance, 40 CFR 51.1108 established the deadline for Serious-area attainment demonstrations to be 48 months after the effective date of nonattainment designation, or July 20, 2016. Under CAA section 182(i), reclassified areas are required to meet the requirements associated with their newly reclassified status according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is "necessary or appropriate to assure consistency among the required submissions."

In our August 23, 2019, rulemaking, EPA exercised its discretion under CAA section 182(i) to adjust the deadlines for other areas in the country that were reclassified to "Serious" for submitting SIP revisions required by CAA section 182(c) (84 FR 44238). In accordance with CAA section 182(i), in order to

"assure consistency among the required submissions", EPA proposes that the same SIP submission due dates and implementation deadlines finalized for other areas reclassified to Serious in our August 23, 2019, rulemaking will apply to the Shoreline Sheboygan area upon its reclassification to Serious. With regard to reasonably available control technology (RACT), EPA's August 23, 2019, rulemaking made a distinction between RACT measures that would be needed for purposes of meeting reasonable further progress (RFP) requirements or for attaining the NAAQS expeditiously, and the possible set of RACT measures that nevertheless are required to be adopted and implemented under the CAA but would not necessarily be needed for a state to meet RFP or demonstrate timely attainment in a particular nonattainment area. These two "categories" of RACT measures are referred to as "RACT measures tied to attainment" and "RACT measures not tied to attainment," respectively.

*A. Due date for Serious area SIP revisions (including RACT measures tied to attainment), and implementation deadline for RACT measures tied to attainment.*

EPA is proposing August 3, 2020, as the due date for Serious area SIP revisions, including RACT measures tied to attainment. EPA is also proposing August 3, 2020, as the implementation deadline for RACT measures tied to attainment for

the Shoreline Sheboygan area. These deadlines are the same as for the other areas reclassified to Serious in EPA's August 23, 2019, rulemaking.

The state submittal requirements for attainment plans, in general, are provided under CAA section 172(c); the SIP requirements that apply to Serious areas for the 2008 ozone NAAQS are listed under CAA section 182(c) and include: (1) enhanced monitoring; (2) attainment demonstration and RFP plan; (3) an enhanced vehicle inspection and maintenance program, if applicable; (4) clean-fuel vehicle programs and transportation control; (5) nonattainment New Source Review program revisions; and (6) contingency measures. States must also provide an analysis of—and adopt all—reasonably available control measures (RACT), including RACT needed for purposes of meeting RFP or timely attaining the NAAQS. Such an analysis should include: (1) an evaluation of controls for sources emitting 100 tons per year (tpy) or more that may have become reasonably available since the January 1, 2017, Moderate area deadline for adopting and implementing RACT, and (2) an evaluation of controls that are currently reasonably available for sources emitting 50 tpy or more, consistent with the Serious area classification.

*B. Due date for submitting SIP revisions for RACT measures not tied to attainment.*

For Serious areas reclassified from Moderate, the requirement for RACT expands to include all sources that emit, or have the potential to emit, 50 tpy of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>). State air agencies responsible for Moderate areas are already required to implement RACT for major sources, defined as sources that emit or have the potential to emit 100 tpy. Thus, states must revise their RACT SIPs to include those other sources emitting or having the potential to emit 50 to 100 tpy. EPA proposes that the State submit its SIP revisions for any RACT not otherwise needed for attainment purposes for the Shoreline Sheboygan area by March 23, 2021. This deadline is the same as for the other areas reclassified to Serious in EPA's August 23, 2019, rulemaking.

*C. Implementation deadline for RACT measures not tied to attainment.*

EPA is proposing July 20, 2021, the Serious area attainment date, as the deadline for implementation of RACT measures not tied to attainment for the Shoreline Sheboygan area. This deadline is the same as for the other areas reclassified to Serious in EPA's August 23, 2019, rulemaking.

#### **IV. Summary of Proposed Actions**

EPA is proposing to determine that the Inland Sheboygan area attained the 2008 ozone NAAQS by the July 20, 2019,

extended attainment date. EPA is also proposing to determine that the Shoreline Sheboygan area failed to attain the standard by the extended attainment date. The effect of failing to attain by the attainment date is that the area will be reclassified by operation of law to "Serious" upon the effective date of the final reclassification action. WDNR will then be required to submit SIP revisions to satisfy the statutory and regulatory requirements for Serious areas for the 2008 ozone NAAQS. EPA is proposing deadlines for submittal of those SIP revisions and implementation of the related control requirements.

## **V. Statutory and Executive Order Reviews**

### **A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review**

This proposed action is not a "significant regulatory action" subject to review by the Office of Management and Budget.

### **B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs**

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### **C. Paperwork Reduction Act (PRA)**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

### **D. Regulatory Flexibility Act (RFA)**

This action is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibilities Act (5 U.S.C. 601 *et seq.*)

### **E. Unfunded Mandates Reform Act (UMRA)**

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments.

### **F. Executive Order 13132: Federalism**

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### **G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

This action does not have tribal implications as specified in Executive Order 13175. It will not have a substantial direct effect on one or more Indian tribes, since EPA's proposed

determination of attainment by the attainment date and reclassification do not impact any areas of Indian country. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

#### **H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks**

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

#### **I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use**

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

**J. National Technology Transfer and Advancement Act (NTTA)**

This rulemaking does not involve technical standards.

**K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).



## **List of Subjects**

### ***40 CFR Part 52***

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Ozone, Volatile organic compounds.

### ***40 CFR Part 81***

Environmental protection, Air pollution control, National  
parks, Wilderness areas

Dated: January 17, 2020.

Cheryl Newton,  
Deputy Regional Administrator, Region 5.

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